

**REMARKS**

This Application has been carefully reviewed in light of the Final Office Action mailed January 19, 2005 (“*Office Action*”). Claims 1-36 are pending in the application, and the Examiner rejects all pending claims. Applicant amends Claims 1, 10, 19, and 28. Applicant respectfully requests reconsideration of the claims.

**Section 103 Rejections**

The Examiner rejects Claims 1-36 under 35 U.S.C. 103(a) as unpatentable over U.S. Patent No. 5,546,379 issued to Thaweethai (“*Thaweethai*”). Applicant respectfully traverses the rejection on the ground that *Thaweethai* fails to teach or suggest all limitations of the claims.

Consider Applicant’s independent Claim 1, which, as amended, recites:

An access server, comprising:  
a plurality of modems;  
a memory operable to store a performance attribute for each modem, wherein for each of the modems, the performance attribute indicates operating performance of the modem as determined based on multiple independent samples taken over a period of operation of the modem;  
an allocation module coupled to the memory and operable to receive a modem request and to select a modem for service according to the modem’s performance attribute; and  
a telecommunications interface coupled to the allocation module and operable to couple a remote modem to the selected modem.

Among other aspects, Applicant respectfully submits that *Thaweethai* fails to teach or suggest “wherein . . . the performance attribute indicates operating performance of the modem as determined based on multiple independent samples taken over a period of operation of the modem,” as required by Claim 1.

The Examiner and the Board relate *Thaweethai*’s disclosed modem characteristics to Applicant’s claimed performance attributes. On appeal, the Board broadly interpreted the term “performance attribute” as used in the claims, stating that Applicant “has not recited in any independent claim on appeal the nature of the disclosed performance attributes.” *Decision*, p. 5. Accordingly, Applicant amends the claims to recite the nature of the disclosed performance attribute.

Applicant respectfully submits that, as amended, Claim 1 clearly recites the nature of the performance attributes -- a performance attribute “indicates operating performance of the

modem as determined based on multiple independent samples taken over a period of operation of the modem.” Moreover, Applicant respectfully submits that Claim 1, as amended, introduces requirements distinct from the requirements of previously presented dependent Claims 2, 11, 20, and 28.

Applicant also respectfully submits that *Thaweethai* fails to teach or suggest the claimed performance attribute. *Thaweethai* repeatedly makes clear that its disclosed modem characteristics are predetermined, fixed qualities of the modems. *Thaweethai*, col. 2, ll. 44-49; col. 18, ll. 52-56; and col. 19, ll. 1-6. In its *Decision*, the Board agreed that “Thaweethai’s modem characteristics are also selected based upon predetermined, prestored information.” *Decision*, p. 5. Predetermined characteristics are not based on actual operating performance. Moreover, *Thaweethai* does not disclose than an operating performance of a modem is determined based on multiple independent samples taken over a period of operation of the modem.

Accordingly, Applicant respectfully submits that *Thaweethai* fails to teach or suggest “wherein . . . the performance attribute indicates operating performance of the modem as determined based on multiple independent samples taken over a period of operation of the modem,” as required by Claim 1. Likewise, independent Claims 10, 19, and 28 include limitations that, for substantially similar reasons, are not taught or suggested by the reference. Because *Thaweethai* fails to teach or suggest every element of independent Claims 1, 10, 19, and 28, Applicant respectfully requests reconsideration and allowance of Claims 1, 10, 19, and 28, and their respective dependent claims.

**CONCLUSION**

Applicant has made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other reasons clearly apparent, Applicant respectfully requests full allowance of all pending claims.

If the Examiner feels that a telephone conference would advance prosecution of this Application in any manner, the Examiner is invited to contact Kurt M. Pankratz, Attorney for Applicant, at the Examiner's convenience at (214) 953-6584.

Although no fees are believed due, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.  
Attorneys for Applicant

A handwritten signature in black ink, appearing to be 'K-M Pankratz', written over a horizontal line.

Kurt M. Pankratz  
Reg. No. 46,977

Date: April 19, 2006

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